

**HON'BLE SRI JUSTICE K.G.SHANKAR**

**CMA No.531 of 2005**

Date: 14-12-2012

Between:

Amara Gopala Krishna Murthy  
and 2 others

.. Appellants

AND

Andhra Pradesh State Road Transport  
Corporation, rep.by its General Manager,  
Musheerabad, Hyderabad.

.. Respondents.

**HON'BLE SRI JUSTICE K.G.SHANKAR**

**MA CMA No.531 of 2005**

**JUDGMENT:**

The Civil Miscellaneous Appeal is filed by the claimants in MVOP No.527 of 2000 on the file of the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Guntur, questioning the award of compensation at Rs.82,000/- together with interest at 9% per annum for the death of Amara Lakshmi Tulasi.

2. The first claimant is the husband of the deceased-Amara Lakshmi Tulasi. Claimants 2 and 3 are the daughters of the deceased. The deceased along with her brother was crossing the road near New Bridge, Tenali. At that time, the offending bus was driven recklessly by the driver of the bus. The bus dashed against the deceased. The deceased sustained multiple

injuries in the said accident. While undergoing treatment at the Government Hospital, Tenali, the deceased died on the same day. Contending that the accident was due to the rash and negligent driving of the driver of the offending bus and that APSRTC is vicariously liable to compensate the claimants, the petition was laid under Sections 140 and 166 of the Motor Vehicles Act claiming compensation at Rs.3,00,000/-.

3. The claimants examined the first claimant, who is the husband of the deceased, as PW.1. He was not an eyewitness for the accident. PW.2 was an eyewitness for the accident. PW.2 was the brother of the deceased. It may be recalled that he was accompanying the deceased at the time of the accident, so much so, he was an eyewitness for the accident. It is he who lodged the First Information Report (FIR), the certified copy of which is Ex.A.1.

4. The FIR itself disclosed that the accident occurred while the deceased and PW.2 were crossing the road. The insurer, consequently, is correct in contending that there was a contributory negligence on the part of the deceased in the culmination of the accident. Regarding the ratio in negligence between the driver of the accident and the deceased, I consider that it would be appropriate to apportion the negligence at 25% on the part of the deceased and 75% on the part of the driver of the

offending bus for the reason that assuming that the deceased was crossing the road rather negligently, the driver of the bus was not expected to drive the bus negligently in traffic. I, therefore, apportion the negligence between the deceased and the driver of the RTC bus at 25% and 75% respectively.

5. The deceased was said to be running a Tiffin Centre at her house and was also doing tailoring work at her house at Ponnur. There is no proof for the allegation that the deceased was conducting business in Tiffin Centre and was doing tailoring work. The evidence of PW.1 in this regard is mere *ipse dixit*. The income of the deceased, therefore, is liable to determine notionally.

6. The accident occurred on 04.07.1999. The deceased was a lady. She was said to be 42 years old at the time of the accident. Taking all these factors into consideration, it is reasonable to determine the income of the deceased notionally at Rs.2,500/- per month. Regarding the multiplier to be applied for the present case, I may point out, at the outset, that Exs.A.3 and A.4 certified copies of inquest report and post-mortem report show that the deceased was 42 years old at the time of her death. For a person, who is 42 years old, the appropriate multiplier is '14'.

7. There are three claimants in this case. Where there are three dependents upon the deceased, it would

be just and proper to deduct  $\frac{1}{3}^{\text{rd}}$  of the income of the deceased towards personal and living expenses. If the notional income of the deceased is Rs.2,500/- per month, the annual income would be Rs.30,000/-. If the same is multiplied by '14', the amount would be Rs.4,20,000/-.  $\frac{1}{3}^{\text{rd}}$  of the same is liable to be deducted towards personal and living expenses of the deceased. Consequently, the claimant shall be entitled to compensation at Rs.2,80,000/- (Rs.4,20,000/- - Rs.1,40,000/-) towards loss of dependency, loss of income and future expectancy of life. However, the negligence on the part of the deceased is considered to be 25%. Consequently, 25% of the same deserves to be deducted from the amount arrived at towards loss of dependency, loss of income and loss of future expectancy of life. If 25% of the said amount is deducted towards contributory negligence on the part of the deceased, the amount would be Rs.2,10,000/- (Rs.2,80,000/- - Rs.70,000/-). Accordingly, the claimants shall be entitled to compensation at Rs.2,10,000/- towards loss of dependency, loss of income and future expectancy of life.

8. The first claimant is widower. The deceased herself was 42 years old. The first claimant was described to be 47 years old. It would, therefore, be appropriate to award Rs.10,000/- towards loss of consortium to the first

claimant. The claimants are also entitled to compensation towards loss of love and affection at Rs.15,000/-. That apart, the claimants are entitled to the compensation at Rs.10,000/- towards loss of estate and Rs.2,000/- funeral expenses. The claimants accordingly are entitled to compensation at

|                                                                                            |                  |
|--------------------------------------------------------------------------------------------|------------------|
| a) Compensation towards loss of dependency, loss of income and loss of expectancy of life. | .. Rs.2,10,000/- |
| b) Compensation towards loss of Consortium in favour of the first claimant.                | .. 10,000/-      |
| c) Compensation towards loss of love and affection                                         | .. 15,000/-      |
| d) Compensation towards loss of estate                                                     | .. 10,000/-      |
| e) Compensation towards funeral expenses                                                   | .. 2,000/-       |
|                                                                                            | -----            |
| Total                                                                                      | .. Rs.2,47,000/- |

=====

8. Where the accident occurred in 1999, I consider it appropriate to grant the rate of interest at 7.5% only on the enhanced part of the awarded amount and not at 9%, as awarded by the Tribunal.

9. Accordingly, this appeal is allowed in part. The appellants-claimants are awarded compensation at Rs.2,47,000/- together with interest at 7.5% per annum on the enhanced part of the awarded amount from the date of the appeal till deposit. The respondent shall deposit the

awarded amount within one month from today.

10. Out of the awarded amount, the first claimant shall be entitled to Rs.87,000/-. The claimants 2 and 3 shall be entitled to Rs.80,000/- each. Each of the claimants is entitled to interest over their respective shares of the awarded amount.

11. After deposit, each of the claimants is entitled to withdraw Rs.50,000/- at the first instance.

The balance shall lie in the fixed deposit for a period of two years at the end of which, the claimants shall be entitled to withdraw balance together with accrued interest. In the event of any urgency for withdrawal beyond the terms provided, the claimants may approach the Tribunal. The Tribunal shall dispose of such application if so files. There shall, however, be no order as to costs in this appeal.

---

**K.G. SHANKAR, J**

Date: 14.12.2012

Isn